

Application Serial No.: 09/653,767
Filing Date: 1 SEPTEMBER 2000
Amendment Dated: July 2, 2004
Reply to Office Action of: February 13, 2004

REMARKS

This Amendment and Response is submitted in response to the Office Action mailed 13 FEBRUARY 2004. Withdrawal of the rejection and reconsideration with an eye toward allowance is respectfully requested.

Claim Status

Claims 1-73 are pending after entry of the present amendment. Claims 1-15 and 26-73 stand rejected and claims 16-25 stand withdrawn. A complete listing of all claims that are, or were in the application, along with an appropriate status identifier, is provided above in the section entitled "Amendments to the Claims". Markings are provided on claims amended in the present amendment.

Claim Rejections – 35 U.S.C. §102

Claims 60-64 were rejected under 35 U.S.C. §102(a) as being anticipated by Franklin et. al. (WO 01/41033 A2).

Applicant respectfully submits that Franklin is disqualified as a prior art reference to Applicant's present application, filed 1 September 2000.

35 U.S.C. §102(a) states that a person shall be entitled to a patent unless "(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent". Applicant respectfully submits that the publication date of Franklin (WO 01/41033) is 7 June 2001, which date is later than Applicant's filing date of 1 September 2000. Accordingly, Applicant submits that the reference is not a proper prior art reference under 35 U.S.C. §102(a).

Applicant further submits that Franklin is also disqualified as a prior art reference under 35 U.S.C. §102(e). The Examiner is respectfully directed to MPEP §706.02(f)(1), reciting Examination Guidelines for Applying References under 35 U.S.C. §102(e). In particular, Applicant refers to "Flowcharts for 35 U.S.C. §102(e) Dates... Chart II: for WIPO publications of International Applications (IA)". Applicant respectfully submits that the International Application was filed after November 29, 2000 and was published in English, but did not designate the United States. As such, Applicant submits that Franklin (WO 01/41033) has no §102(e) date and would be available only as of its publication date of 7 June 2001, after Applicant's filing date.

Accordingly, Applicant submits that the 35 U.S.C. §102(a) rejection of claims 60-64 over Franklin is improper, and should be withdrawn.

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Claim Rejections – 35 U.S.C. §103


Claims 1-15, 26-66 and 68-73 were rejected under 35 U.S.C. §103(a) as being unpatentable over Franklin.

As discussed above, Applicant submits that the Franklin reference is unavailable as prior art against Applicant's present application. Accordingly, Applicant further submits that the 35 U.S.C. §103(a) rejection of claims 1-15, 26-66 and 68-73 over Franklin is improper and should be withdrawn.

CONCLUSION

Prompt and favorable consideration of this Amendment and Response is respectfully requested. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is invited to call the undersigned at (415) 781-1989.

Respectfully submitted,
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